

DLC

Disability Law Center, Inc.
11 Beacon Street, Suite 925
Boston, Massachusetts 02108

(617) 723-8455 Voice
(800) 872-9992 Voice
(617) 227-9464 TTY
(800) 381-0577 TTY
(617) 723-9125 Fax

Western Mass Office
30 Industrial Drive East
Northampton, MA 01060
(413) 584-6337
(800) 222-5619
(413) 582-6919 TTY
(413) 584-2976 Fax

<http://www.dlc-ma.org>
email: mail@dlc-ma.org

December 20, 2004
by e-mail: regulations@SSA.gov

Jo Anne B. Barnhart
Commissioner
Social Security Administration
P.O. Box 17703
Baltimore, MD 21235-6401

Re: Administrative Review Process; Incorporation by Reference of Oral Findings of Fact and Rationale in Wholly Favorable Written Decisions. 69 Fed. Reg. 61594 (10/20/04).

Dear Commissioner Barnhart:

I write to provide comment upon the above-referenced rules, published as final regulations with request for comments. The Disability Law Center is a private, nonprofit protection and advocacy agency that provides free legal assistance to persons with disabilities throughout Massachusetts. Since 1983, the Disability Benefits Project (DBP) at the Disability Law Center has provided technical back up and support to legal services advocates and private attorneys engaged in Social Security and SSI law practice. DBP supports high quality representation and advocacy for those seeking Social Security and SSI benefits.

First, we encourage and applaud sensible efforts to speed up the disability determination process in ways that protect claimant rights. Allowing Administrative Law Judges (ALJs) to incorporate oral findings by reference may have the intended result of speeding up the issuance of decisions where the ALJ can determine at hearing that the decision should be fully favorable. However, care must be taken now to avoid casual, perfunctory and superficial use of the process for incorporation by reference that will cause problems later.

It is of great importance for all concerned, claimants, their representatives, and SSA that the basis for decisions issued pursuant to this process be clear. Claimants must be able to readily discern whether the decision is indeed fully favorable and, if not, the issues for appeal. We have certainly seen cases in which decisions purporting to be fully favorable were not when more

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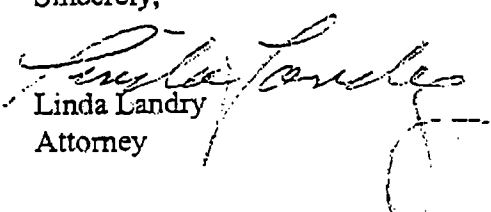
closely studied. Other advocates around the country have reported these situations as well. Without strict clarity, claimants, especially unrepresented claimants, will be at risk for missed appeal deadlines and lost benefits. In addition, hearing proceeding recordings or transcripts must be either automatically provided to claimants or their availability must be much more prominently publicized and explained, including in the hearing decision. If not automatically provided, additional time to appeal or otherwise respond must be routinely given when providing hearing proceeding recordings or transcripts.

Second, we fear that this process could cause problems for claimants applying for Expedited Reinstatement (EXR) and also for those undergoing Continuing Disability Reviews (CDRs). In both EXR and CDR cases, details about the prior disability allowance are critical to the decision making process. Written decisions under the incorporation by reference process will be shorter, presumably referencing both the ALJ's oral findings at hearing and the ALJ's check sheet. However, it is not clear how the oral findings at hearing will be associated with the prior decision and made available to either SSA adjudicators or to claimants and their representatives. Presumably, when the files become paperless, the hearing recordings can be made part of the electronic file. But until then, will the hearing recordings be automatically associated and kept with the paper file? Or, will we have the same problem as has existed at the Appeals Council, with delays in adjudication due to the need to find the recordings for each case? Such delays will play havoc with timely EXR and CDR processing.

Third, we are concerned that perfunctory use of the incorporation by reference process will result in inadequate findings in the record. For example, the check sheet does not include enough detail for the necessary CDR comparison point decision analysis. If the ALJ does no more in his or her oral findings than follow the check sheet, CDR decision making will be negatively impacted.

Finally, while we are not opposed to use of the incorporation by reference process, we feel that improvements must be made to avoid the above discussed problems. Thank you very much for this opportunity to comment.

Sincerely,



Linda Landry
Attorney